

**United States Department of Labor
Employees' Compensation Appeals Board**

J.S., Appellant

and

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Kearny, NJ,
Employer**

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**Docket No. 09-78
Issued: April 14, 2009**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 10, 2008 appellant, through her attorney, filed a timely appeal from November 9, 2007 and June 23, 2008 merit decisions of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained an injury on April 12, 2007.

FACTUAL HISTORY

On April 17, 2007 appellant, then a 49-year-old clerk, filed a claim alleging that on April 12, 2007 she injured her left hip when she tried to sit on a rest bar that "slid down abruptly." She stopped work on April 12, 2007. The employing establishment noted that sitting on rest bars was "in direct conflict with previous service talks on [the] proper use of reset bars."

On April 13, 2007 a physician or nurse at the employing establishment's clinic indicated that appellant injured her left hip and recommended further medical treatment.

On April 16, 2007 Dr. Obulakshmipriya Chandrasekaran, a Board-certified internist, related that a week prior appellant sat on a chair that gave way. Appellant fell on her buttock and subsequently experienced back pain. She received treatment in the emergency room for back pain. Dr. Chandrasekaran diagnosed "[s]tatus post fall, probably musculoskeletal pain with muscle spasm will need to rule out any disc prolapsed or any hip arthritis associated with that." In a disability certificate of the same date, he found that appellant should remain off work until April 19, 2007.

On April 27, 2007 Dr. Chandrasekaran noted that appellant experienced left-sided hip pain after a fall at work. He diagnosed left hip pain, status post fall and a history of neck pain possibly from spondylosis or disc disease.

In a May 5, 2007 duty status report, Dr. Chandrasekaran diagnosed a muscle spasm after a fall and checked "yes" that the history given corresponded to that on the form of a rest bar sliding down after appellant tried to sit on it. He found that she could work five hours per day with restrictions. In a duty status reports dated May 31 and June 21, 2007, Dr. Chandrasekaran diagnosed a muscle spasm of the back status post fall and found that she could work part time with restrictions.

By letter dated June 26, 2007, the Office requested additional factual and medical information. In a progress report dated July 19, 2007, Dr. Priyanka Sanjay, a Board-certified internist, discussed appellant's history of an injury on April 12, 2007 when she leaned on a rest bar. He noted that x-rays of her hip revealed degenerative arthritis. Dr. Sanjay determined that a magnetic resonance imaging (MRI) scan study showed a small disc herniation at L5-S1 and disc bulging at L4-5 and L5-S1. He diagnosed lumbar radiculopathy with a disc herniation and bulging. Dr. Sanjay referred appellant to an orthopedic surgeon.

In a statement dated July 23, 2007, appellant denied sitting on the rest bar. She asserted that her supervisor had completed her claim form because she was at the hospital. Appellant related that on April 12, 2007, she adjusted the rest bar to her height and secured it into its slot as back support. She stated:

"When I leaned against the rest bar it suddenly dropped down about 12 to 18 inches causing the back of the rest bar to go into a flat position. My lower back and left hip hit the flat position of the rest bar very hard. After my back and left hip hit the flat surface of the rest bar I changed reset bars and continued to work. As time passed the pain however became intense and approximately 9:30 p.m. I reported the accident to my supervisor."

Appellant went to the emergency room and received treatment for a muscle spasm and lower back and left hip inflammation.

By decision dated July 31, 2007, the Office denied appellant's claim on the grounds he failed to establish an injury as alleged. On July 31, 2007 appellant's supervisor maintained that

appellant told her that she had tried to sit on the rest bar. The rest bar was later tested and found “defective and not suitable for usage.”

In a report dated August 27, 2007, Dr. David Weiss, an osteopath, Board-certified in family practice, discussed appellant’s history of her hitting her lower back after she leaned against a rest bar that dropped suddenly. He noted the day that she went to the emergency room, she received a diagnosis for muscle spasm. Dr. Weiss diagnosed chronic post-traumatic lumbosacral strain/sprain, a herniated nucleus pulposus at L5-S1, a bulging L4-5 lumbar disc and post-traumatic left sacroiliac joint dysfunction. He stated:

“Based upon my review of the medical records from [appellant], including my personal review of the MRI [scan] [study], the history and today’s orthopedic evaluation, it is my opinion that the competent producing factor for [appellant’s] current low back pathology is directly due to the work[-]related injury of April 12, 2007 while working as a clerk for the [employing establishment].”

On August 30, 2007 appellant requested reconsideration. In a progress report dated September 10, 2007, Dr. Weiss found muscle spasm of the lumbar spine and tenderness over the left sacroiliac joint. By decision dated November 9, 2007, the Office denied modification of its July 31, 2007 decision.

In a June 2, 2007 work restriction evaluation, received by the Office on March 6, 2008, Dr. Chandrasekaran diagnosed muscle spasm due to a recent fall and found that she could work five hours per day with restrictions.

On February 29, 2008 appellant’s attorney requested reconsideration, contending that the medical reports established a causal relationship between her back and hip condition and the April 12, 2007 work incident. He submitted progress reports from Dr. Weiss dated October 1, 2007 and November 21, 2007 and a progress report from Dr. Sanjay, who diagnosed lumbar radiculopathy and noted that appellant, was receiving orthopedic treatment.

In a report dated March 30, 2008, Dr. Weiss discussed his treatment of appellant for an April 12, 2007 work injury which occurred when she leaned against a rest bar and it dropped suddenly, causing her left hip and lower back to hit the bar. He diagnosed chronic lumbosacral strain/sprain, a herniated disc at L5-S1, a bulging disc at L4-5 and left sacroiliac joint dysfunction. Dr. Weiss concluded that appellant’s left hip and back conditions were due to the April 12, 2007 injury and noted that she “denies any prior injuries or pathology to the lumbar spine or left hip and therefore, again, it is my opinion that [appellant’s] injuries are a result of the work[-]related injury, which occurred on April 12, 2007.”

By decision dated June 23, 2008, the Office denied modification of its prior merit decisions.

On appeal, appellant’s attorney argues that the medical evidence is sufficient to establish that she sustained an injury in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, it shares responsibility to see that justice is done.⁷

ANALYSIS

Appellant alleged that on April 12, 2007 she sustained an injury when she leaned against a rest bar that suddenly dropped to the ground. Her supervisor completed her claim form and indicated that she sustained an injury when she tried to sit on the rest bar and it slid down abruptly. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸ Appellant described the occurrence of her injury in detail in a July 23, 2007

¹ 5 U.S.C. §§ 8101-8193.

² *Anthony P. Silva*, 55 ECAB 179 (2003).

³ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁶ *Id.*

⁷ *Jimmy A. Hammons*, 51 ECAB 219 (1999).

⁸ *Caroline Thomas*, 51 ECAB 451 (2000).

statement. She related that she leaned against the rest bar and that it dropped suddenly. Appellant hit her back and left hip on the rest bar. She reported the incident to her supervisor shortly thereafter and related that she sought medical treatment the same day. The employing establishment has not challenged that appellant used a rest bar that gave way on April 12, 2007 and the record contains no inconsistencies in the evidence sufficient to cast doubt on the validity of the claim.⁹ The Board finds that appellant has established that the April 12, 2007 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

On April 16, 2007 Dr. Chandrasekaran described appellant's injury as occurring when she sat on a chair that gave way at work. He diagnosed musculoskeletal pain and muscle spasm status post fall and to rule out a disc prolapse or hip arthritis. On April 27, 2007 Dr. Chandrasekaran noted that appellant complained of hip pain on the left side after a fall at work. He diagnosed left hip pain status post fall and a history of neck pain from either spondylosis or disc disease. In duty status reports dated May 5 and 31, 2007, Dr. Chandrasekaran diagnosed a muscle spasm of the back after a fall and checked "yes" that the history given corresponded to that on the form of a rest bar sliding down. On July 19, 2007 Dr. Sanjay discussed appellant's history of an injury on April 12, 2007 when she leaned on a rest bar. He diagnosed lumbar radiculopathy with a disc herniation and bulging.

In an initial evaluation dated August 27, 2007, Dr. Weiss reviewed appellant's description of the April 12, 2007 work incident and diagnosed chronic post-traumatic lumbosacral strain and sprain, a herniated nucleus pulposus at L5-S1, a bulging L4-5 lumbar disc and post-traumatic left sacroiliac joint dysfunction. He opined that appellant's low back condition was directly related to the April 12, 2007 employment incident. On March 30, 2007 Dr. Weiss attributed appellant's diagnosed conditions of lumbosacral strain, a herniated disc at L5-S1, an L4-5 bulging disc and left sacroiliac joint dysfunction to the rest bar dropping on April 12, 2007. He noted that she denied any prior injuries and thus her injuries resulted from the April 12, 2007 work incident.

It is well established that proceedings under the Act are not adversarial in nature and that while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰ Although Drs. Chandrasekaran, Sanjay and Weiss do not provide sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that she sustained an injury on April 12, 2007, their opinions raise an inference of causal relationship sufficient to require further development by the Office.¹¹ Additionally, the record does not contain any contradictory medical evidence. The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained an injury to her back and left hip on April 12, 2007 and, if so, the nature and extent of any disability or need for medical treatment. After such further development as it deems necessary, it shall issue a *de novo* decision.

⁹ See *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁰ *Allen C. Hundley*, 53 ECAB 551 (2002).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); *John J. Carlone*, 41 ECAB 354 (1989).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 23, 2008 and November 9, 2007 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 14, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board